

SB 1353 (Perata)
Definition of "Income"
Version: Amended, June 17, 2004
Status: On Assembly floor
(Commission sponsored)

Executive Summary

Senate Bill 1353 is a Commission-sponsored measure that would exclude Social Security, disability, and other similar benefit payments from the definition of income, and add guaranteed-overnight delivery to the methods of delivering supplemental pre-election campaign statements.

Staff has identified this bill as a vehicle for an additional amendment that would remedy a controversy arising out of refusal by federal representatives on the California Bay-Delta Authority to file Statements of Economic Interests (SEIs). The language would resolve the issue as to all federal employees serving in their federal capacities on state and local agencies.

Recommendation

Staff recommends the Commission seek amendments as provided for on page 2, below.

Background

In January of 2003, the Commission voted to sponsor legislation to exclude Social Security, disability and other similar government benefit payments from the definition of income, and to add "guaranteed-overnight delivery," such as Federal Express and USPS "Overnight Mail," as allowable methods of delivering supplemental pre-election statements. The language was introduced in SB 1353, which has made its way through the Senate, and the Assembly policy and fiscal committees, and now awaits the approval of the full Assembly. It is expected to pass on the consent calendar as it has received neither opposition nor "no" votes.

In January of this year, the California Bay-Delta Authority ("Bay-Delta") requested advice about their federal member's SEI filing obligations under the Political Reform Act (the "Act"). The mission statement of the Bay-Delta Authority is "to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta System." The Bay-Delta Authority is comprised of representatives of six state and six federal agencies, six public members from various regions of the Bay-Delta area, and two at-large public members.¹ The chairman and vice chairman of the respective Senate and Assembly committees with jurisdiction over water issues serve as non-voting, *ex-officio* members as well.

¹ Under California Water Code section 79412, state members: the Secretary of the Resources Agency, the Secretary of the California Environmental Protection Agency, the Director of Water Resources, the Director of Fish and Game, the Director of Health Services, and the Secretary of the Department of Food and Agriculture. Federal members: the Secretary of the Interior, the Regional Administrator of Region IX of the United States Environmental Protection Agency, the Operations Manager of the California/Nevada Operations for the Office of the United States Fish and Wildlife Service, the Regional Director of the United States Mid-Pacific Region of the Bureau of Reclamation, the District Engineer of the United States Sacramento District of the Army Corp of Engineers, and the Regional Administrator of the Southwest Region of the United States National Marine Fisheries Service.

Following the issuance of an advice letter (*Hagler*, A-04-20) in which staff concluded that they lacked the authority to advise that federal representatives were not required to file, federal members of the Bay-Delta Authority announced that they would not file Statements of Economic Interests, and refused to attend meetings of the Authority until the issue was resolved. Through negotiations with Chairman Randolph and staff, the following amendments were developed:

Add the following paragraph to the definition of “designated employee” (G.C. sec. 82019):

“Designated employee” does not include a federal officer or employee serving in an official federal capacity on a state or local government agency. The state or local government agency shall annually obtain, and maintain in its files for public inspection, a copy of any public financial disclosure report filed by the federal officer or employee pursuant to federal law.”

Amend definition of “public official” (G.C. sec. 82048) as follows:

~~“Public official” means every member, officer, employee or consultant of a state or local government agency, but does not include judges and court commissioners in the judicial branch of government. “Public official” also does not include members of the Board of Governors and designated employees of the State Bar of California, members of the Judicial Council, and members of the Commission on Judicial Performance, provided that they are subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in Section 6038 of that article.~~

(a) *“Public official” means every member, officer, employee or consultant of a state or local government agency.*

(b) *Notwithstanding subdivision (a), “public official” does not include:*

(1) *a judge and court commissioner in the judicial branch of government;*

(2) *a member of the Board of Governors and designated employees of the State Bar of California;*

(3) *a member of the Judicial Council;*

(4) *a member of the Commission on Judicial Performance, provided that they are subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in Section 6038 of that article; and*

(5) ***a federal officer or employee serving in an official federal capacity on a state or local government agency.***

Analysis

Staff recommends approval of the above language. It has been approved by state representatives to the Bay-Delta Authority, and staff believes it will work well for all state and local agencies with federal representation. It ensures some measure of disclosure through state officials who are charged with obtaining copies of federal filings. The language has also been shared with federal counsel. Although not providing formal comments due to ongoing concerns about interfering with state legislative prerogatives, federal counsel did not identify any substantive concerns with the approach proposed in the legislation.